



California Fair Political Practices Commission

July 18, 1986

Joseph A. Montoya
Chief Counsel
Legal Division
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-86-216

Dear Mr. Montoya:

You have requested advice on behalf of the California Department of Transportation (Caltrans) and one of your staff attorneys, Karl Schmidt, regarding the obligation of Mr. Schmidt to disqualify himself from any decision in which he may have a conflict of interest under the provisions of the Political Reform Act.^{1/}

QUESTION

Does the income received by a Caltrans attorney through his spouse's employment create a conflict of interest so as to preclude participation by that attorney in litigation when his spouse is employed by someone whose interests are adverse to Caltrans' interest in that litigation?

CONCLUSION

Income received by a Caltrans attorney through his spouse's employment does require disqualification by that attorney in litigation involving his spouse's employer.

ANALYSIS

Mr. Karl Schmidt, an attorney employed by Caltrans, is handling extremely complex multi-party litigation between

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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Caltrans, the City of Petaluma, and various landowners. It has recently been learned that Fireman's Fund is the insurance carrier for the City of Petaluma and its attorneys are now representing the City in the action, where the exposure is in the millions of dollars.

Mr. Schmidt is married to a full-time employee of Fireman's Fund. Specifically, his wife is an Assistant Vice President in charge of Systems Procedures and Finance in the Claims operation. Therefore, Fireman's Fund is a source of income to her. She has no direct involvement with the case. Mr. Schmidt has requested that you seek our advice as to whether he must disqualify himself and turn the case over to someone else on your staff.

Section 87100 states that no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

There is no question that Mr. Schmidt is a public official involved in governmental decision-making under the provisions of the Act. Section 82048 defines a "public official" as "every member, officer, employee, or consultant of a state or local agency." This description clearly includes Mr. Schmidt. The only issue to be decided is whether he has a "financial interest" in the decisions he will make.

Section 87103 defines "financial interest":

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

"Income" for the public official is defined to include any community property interest income of a spouse. Section 82030. As Mr. Schmidt's spouse has presumably received over \$500 of income from her employer within the last 12 months, her husband's community property share is more than \$250 according to the terms of Section 82030 and makes Fireman's Fund a source of income to Mr. Schmidt within the meaning of Section 87103(c).

Therefore, Mr. Schmidt does have a financial interest in decisions which may affect a source of his income if it is reasonably foreseeable that any decision he makes might have a material financial effect on Fireman's Fund. Given the key role of Mr. Schmidt as an attorney in the litigation against his spouse's employer, he will no doubt make decisions which could have a reasonably foreseeable financial effect on Fireman's Fund. The remaining question is whether that financial effect will be material?

Materiality of a financial effect is addressed by 2 Cal. Adm. Code Section 18702.2. According to that regulation, a reasonably foreseeable financial effect of a government decision will be material if, in the case of any business entity listed on the most recently published Fortune magazine directory of the 500 largest U.S. nonindustrial corporations, there is:

A) An increase or decrease in gross revenues of \$1,000,000 or more.

B) An increase or decrease in assets or liabilities of \$1,000,000 or more.

C) An increase or decrease in net expenditures of \$250,000 or more.

Fireman's Fund is on the Fortune 500 list. You have informed us that there is an extremely high dollar exposure at issue in this case. You have described this exposure to be on the order of millions of dollars. Given that fact, there is little doubt that Mr. Schmidt's decisions could effect Fireman's Fund by an amount well in excess of the measures above.

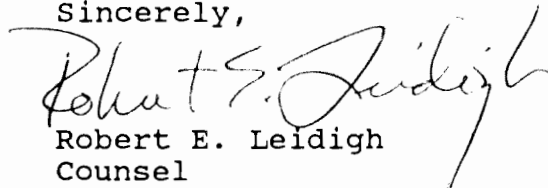
A judgment in the case could increase or decrease net expenditures by more than \$250,000 from the pay-out of awards, or it could increase liabilities by more than \$1,000,000 by increasing the debt owed those individuals awarded a judgment. It is apparent that the financial effect upon Fireman's Fund is material under 2 Cal. Adm. Code Section 18702.2. As a result,

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Mr. Schmidt is precluded from participating in the litigation between Caltrans versus the City of Petaluma and his wife's employer, Fireman's Fund, by Section 87100.

I trust that this letter has adequately memorialized our discussion. Should you have further questions, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:DL:plh

STATE OF CALIFORNIA

BUSINESS, TRANSPORTATION
AND HOUSING AGENCY

JUL 2 8 05 AM '86

M E M O R A N D U M

TO: Don Stanford, Chairman
Fair Political Practices Comm.
P. O. Box 807
Sacramento, CA 95804

DATE: June 26, 1986

FROM: DEPARTMENT OF TRANSPORTATION--LEGAL DIVISION

SUBJECT: Possible Conflict of Interest

We request your opinion on a possible conflict of interest regarding one of our attorneys (see Gov. Code sec. 87100, et seq; Title 2, Admin. Code 18700, et seq.).

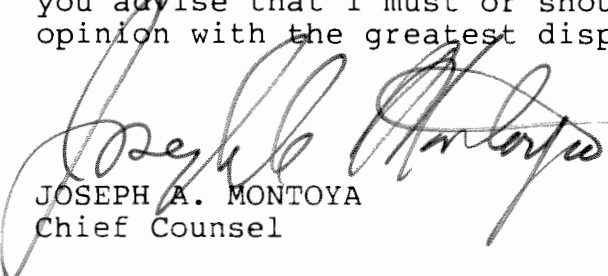
FACTS

An attorney employed by this Department is handling extremely complex multi-party litigation with extremely high dollar exposure in three separate filings. We are in this litigation solely as a result of a cross-complaint filed against us by the City of Petaluma. We have just recently discovered that that entity is insured, for risks such as alleged against it here, by Firemen's Fund Insurance Company. The Department's attorney is married to a full-time employee of that company. Specifically, she is an Assistant Vice-President in charge of Systems Procedure and Finance in the claims operation. She has no exposure to decisions relating to the settlement of individual claims.

QUESTION

Does the income received by the Department's attorney through his wife's employment, or for that matter any other circumstance here presented, create a conflict of interest so as to preclude further participation by that attorney in this litigation on behalf of the Department?

Please note that the first case is set for trial September 17, 1986. Because of staffing problems and the depth of the involvement of that attorney prior to learning that this problem existed, I cannot replace this attorney in the assignment unless you advise that I must or should. I therefore request your opinion with the greatest dispatch possible.


JOSEPH A. MONTOKA
Chief Counsel

STATE OF CALIFORNIA

BUSINESS, TRANSPORTATION
AND HOUSING AGENCY

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JOSEPH A. MONTOYA
Chief Counsel

445-3464



California Fair Political Practices Commission

July 2, 1986

Joseph A. Montoya, Chief Counsel
Department of Transportation
1120 N Street
Sacramento, CA 95814

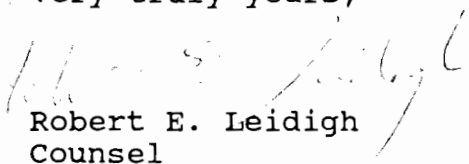
Re: 86-2156

Dear Mr. Montoya:

Your letter requesting advice under the Political Reform Act has been received on July 2, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

inverse condemnation
& tort for flooding
many property owners
involved - 3 suits -
diff. #s, same
Defendants -
2 are City of Petaluma
& Cal Trans are 2
City of Petaluma has sued Cal Trans
as X-defendant

F. even if it is pending